

Attorney Docket No. P61813US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Peet KASK

Via facsimile
703-872-9306

Application No. 09/029,830

Group Art Unit 1639

Filed March 10, 1998

Examiner Jon D. Epperson

For METHOD OF ANALYSIS OF SAMPLES BY DETERMINATION OF A FUNCTION OF
SPECIFIC BRIGHTNESS

RESPONSE TO SPECIES ELECTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

The instant paper, transmitted by facsimile, responds to the Office Action (species election requirement) mailed January 16, 2004.

As the Subgroup 1 microscope species, applicant elects the confocal microscope in claim 79 and, as the "data acquisition means" recited in the claim, two detectors and two filters.

As the Subgroup 2 general particles species, applicant elects vesicles.

As the Subgroup 3 measurement-volume-restriction species, applicant elects "elements of near field optical microscopy" and, as the elements used, a pinhole.

Claims 77-96 read on the elected species.

The aforesaid election is made with traverse. Traverse is maintained in that the species election requirement – as set forth in §4 of the Office Action (pages 2-3), appears confused and based on a misinterpretation of the presently claimed invention.

For example, according to the "Subgroup 1" species election, the "data acquisition means" recited in claim 79 "has one or two detectors and . . . uses one or two color filters" (Office Action page 2, lines 2-4 from the bottom). Neither claim 79 nor the specification requires that the "data acquisition means" be limited to *one or two detectors* and *one or two color filters*. Further, neither claim 79 nor the specification requires that the recited "data acquisition means" be limited to include

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any *filters*, whatsoever, let alone *color filters*; and, moreover, what is meant by "color" filters cannot be ascertained.

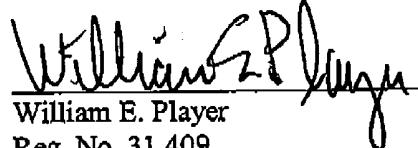
In view of the foregoing, the species election requirement fails to "Clearly identify each . . . of the disclosed species" (*emphasis added*) in accordance with MPEP 809.02(a)(B) and, therefore, cannot be maintained. *See also*, MPEP 806.04(a) – 806.04(i) and 808.01(a).

Favorable action is requested.

Respectfully submitted,

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